



## FAIR POLITICAL PRACTICES COMMISSION

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October 8, 2002

Diane M. Fishburn  
Olson, Hagel, Waters & Fishburn, LLP  
555 Capitol Mall, Suite 1425  
Sacramento, CA 95814-4602

**Re: Your Request for Advice**  
**Our File No. A-02-257**

Dear Ms. Fishburn:

This letter is in response to your request for advice on behalf of John Garamendi regarding the provisions of the Political Reform Act (the "Act")<sup>1</sup> related to his acceptance of contributions in connection with a committee organized to support his candidacy for a statewide elective office in the November 5, 2002, election.

### QUESTIONS

1. If Mr. Garamendi is elected Insurance Commissioner on November 5, 2002, and if his campaign committee has "net debts," may the committee continue to accept contributions in excess of the limits imposed by sections 85301 and 85302<sup>2</sup> after the election to pay the "net debts?"
2. If the "net debts" consist of loans made to Mr. Garamendi's campaign committee prior to the November 5, 2002, election, may those loans be forgiven by the lender after the election if the amount to be forgiven exceeds the limits imposed by sections 85301 and 85302?
3. After the campaign committee's "net debts" are repaid, may the committee continue to accept contributions after the November 5, 2002, election in order to pay for expenditures permitted by sections 89511 through 89518?
4. If Mr. Garamendi's campaign committee may continue to accept contributions after its "net debts" are repaid to pay expenditures permitted by sections

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

<sup>2</sup> Further statutory references are to the Government Code, unless otherwise specified.

89511 through 89518, would the contribution limits imposed by sections 85301 and 85302 be applicable to contributions received by the committee after November 5, 2002?

### CONCLUSIONS

1. Yes. To implement section 83 of Proposition 34 in connection with section 85316, the Commission has determined that candidates for statewide elective office in the November 5, 2002, election are not subject to contribution limits to pay net debts of the committee in connection with that election. Therefore, Mr. Garamendi's committee may continue to accept contributions in excess of the contribution limits imposed by sections 85301 and 85302 after the election to pay "net debts" from that election.

2. Yes. Consistent with conclusion #1, contributors who loaned Mr. Garamendi money for the November 5, 2002, election may forgive the loans in amounts in excess of the limits imposed by sections 85301 and 85302 after the November 5, 2002, election.

3 & 4. These questions present important policy considerations under Proposition 34 which have not yet been considered by the Commission, and which may result in limiting fundraising after the November 5, 2002, election. Moreover, since the questions are hypothetical in nature, Mr. Garamendi should seek additional guidance from the Commission after the November 5, 2002, election.

### FACTS

John Garamendi is a candidate for the statewide office of Insurance Commissioner on the November 5, 2002, ballot. He has established a campaign committee, the Garamendi Committee ("Committee") for his 2002 election campaign.

### ANALYSIS

**1. If Mr. Garamendi is elected to statewide office on November 5, 2002, and if his campaign committee has "net debts," may the committee continue to accept contributions in excess of the limits imposed by Government Code sections 85301 and 85302 after the election to pay the "net debts?"**

Section 83 of Proposition 34 was amended by SB 34 (Burton) on September 4, 2001. The amended version of Section 83 provides:

"This act shall become operative on January 1, 2001.  
However, Article 3 (commencing with Section 85300),  
except subdivisions (a) and (c) of Section 85309, Section  
85319, Article 4 (commencing with Section 85400), and  
Article 6 (commencing with Section 85600), of Chapter 5

of Title 9 of the Government Code shall apply to candidates for statewide elective office beginning on and after November 6, 2002.”

This section, an uncodified section of Proposition 34, includes the provisions related to contribution limits (Article 3), except subdivisions (a) and (c) of section 85309, and section 85319. Section 83 further excludes the entirety of Article 4, which deals with voluntary expenditure ceilings, and Article 6, which addresses the ballot pamphlet designations related to a candidate’s acceptance or rejection of the voluntary expenditure ceilings set forth in Article 4.

Except for these sections, pursuant to section 83, the provisions of chapter 5 related to limitations on contributions and to post-election fundraising, shall only apply to candidates for statewide elective office “beginning on and after November 6, 2002.”

Section 85316, which is included within the scope of section 83, provides:

“A contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.”

To implement section 83 in connection with section 85316, the Commission adopted regulation 18531.6(e), which states:

“Notwithstanding subdivision (b), this regulation does not apply to a candidate for statewide elective office in an election held before November 6, 2002.”

Subdivision (b) of regulation 18531.6 limits post-election fundraising regardless of the date in which a committee was formed if it was activity occurring on or after January 1, 2001.

According to the minutes of the July 9, 2001, Commission meeting, the language of subdivision(e) of the regulation was designed to “employ[] the date of the election for which the committee was formed as its triggering mechanism.” (FPPC Minutes, July 9, pg. 20.) In connection with its interpretation of section 85316, the Commission rejected language that had the date of the activity, e.g., a contribution, as its triggering mechanism.

The memorandum in support of regulation 18531.6 prepared for the July 9, 2001, Commission meeting, dated June 26, 2001, further explains that the Commission’s selection of the above-quoted language was consistent with its earlier decision regarding the applicability of the Proposition 34 contribution limits to committees formed for

elections held prior to January 1, 2001, the effective date of Proposition 34. In the course of that decision, the Commission had, likewise, selected the election as the triggering mechanism for application of the statute.

In light of this background, Mr. Garamendi's committee for Insurance Commissioner in connection with the November 5, 2002, election, may accept contributions in excess of the limits imposed by sections 85301 and 85302 after the election to pay any "net debts" that the committee may have from that election. However, as discussed in Conclusion #4, contribution limits may apply to post-election fundraising not connected to debt repayment.

**2. If the "net debts" consist of loans made to Mr. Garamendi's campaign committee prior to the November 5, 2002, election, may those loans be forgiven by the lender after the election if the amount to be forgiven exceeds the limits imposed by sections 85301 and 85302?**

A loan constitutes a debt of a committee. A forgiveness of a loan is a contribution that would be subject to any applicable contribution limits. (Section 82015(a).) Consistent with conclusion #1, contributors who loan Mr. Garamendi money may forgive the loans in amounts in excess of the limits imposed by sections 85301 and 85302 after the November 5, 2002, election.

**3. After the campaign committee's "net debts" are repaid, may the committee continue to accept contributions after the November 5, 2002, election in order to pay for expenditures permitted by Government Code sections 89511 through 89518?**

**4. If Mr. Garamendi's campaign committee may continue to accept contributions after its "net debts" are repaid to pay expenditures permitted by sections 89511 through 89518, would the contribution limits imposed by sections 85301 and 85302 be applicable to contributions received by the committee after November 5, 2002?**

You ask whether Mr. Garamendi can raise funds in unlimited amounts after the November 5, 2002, election for expenditures permitted by Government Code sections 89511 through 89518, but unrelated to debt repayment.

We are unable to provide an answer to these questions at this time. While regulation 18531.6 allows us to address questions #1 and 2, questions #3 and 4 present significant policy considerations which are not addressed by the regulation and have not yet been considered by the Commission. For example, while the Commission selected the election as the triggering mechanism for application of section 85316, it also subsequently adopted regulatory language to implement Proposition 34 requiring candidates to terminate their committees by a date certain. (Regulation 18404.1.) The

Commission adopted the committee termination requirements, in part, to prevent circumvention of the contribution limits subsequent to a candidate's election.

Given the distinguishable factual and legal circumstances between the initial application of the contribution limits to legislators versus the application to statewide officeholders under the delayed effective date, the Commission may determine that it is appropriate to further regulate post-election fundraising in statewide races. Moreover, since these questions are hypothetical in nature, Mr. Garamendi should seek additional assistance from the Commission after the November 5, 2002, election. This will also enable him to pose specific questions regarding the nature of the fundraising events and the planned expenditures of his committee.

With respect to question #3, we note that section 89510(b) provides that:

“All contributions deposited into the campaign account shall be deemed to be held in trust for expenses associated with the election of the candidate or for expenses associated with holding office.”

Section 89512 further provides:

“An expenditure to seek office is within the lawful execution of the trust imposed by Section 89510 if it is reasonably related to a political purpose. An expenditure associated with holding office is within the lawful execution of the trust imposed by Section 89510 if it is reasonably related to a legislative or governmental purpose. Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.”

Sections 89511 through 89518 set forth permissible uses of campaign funds and include, but are not limited to, what are commonly called “officeholder expenses.” Consistent with section 89510(b), to the extent allowable committee expenses would include more than debt repayment, such expenses would only include those that would not be used for expenses related to Mr. Garamendi's candidacy in a future election. (Section 89510; *Olson* Advice Letter, No. I-01-144.)

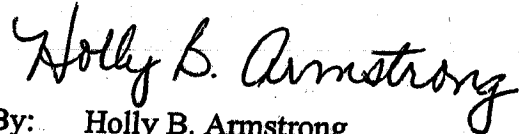
Finally, we note that Commission staff has advised that the Commission “has interpreted section 83 to mean that the contribution limits are lifted for contributors to candidates for statewide elective office contributing to campaigns for elections to be held prior to November 6, 2002.” (*Miller* Advice Letter, No. A-01-168.) This letter primarily addresses fundraising occurring prior to an election and does not address the specific questions you raise. As discussed above, the Commission may opt to interpret section 83 and other pertinent provisions of Proposition 34 to limit post-

election fundraising by statewide candidates in order to prevent circumvention of the contribution limits of sections 85301 and 85302.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

A handwritten signature in cursive script that reads "Holly B. Armstrong".

By: Holly B. Armstrong  
Staff Counsel, Legal Division

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